

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRUCE E. SMITH,

Petitioner,

V.

JEFFREY UTTECHT,

Respondent.

Case No. C06-5678RJB-KLS

SECOND ORDER TO SHOW CAUSE

This matter is before the Court on petitioner's response (Dkt. #12) to the Court's order to show cause (Dkt. #10) and his filing for a motion to stay the proceedings in this matter (Dkt. #11). The Court, having reviewed petitioner's response to its order to show cause, his motion to stay, and the balance of the record, hereby finds and ORDERS:

On November 20, 2006, petitioner filed an application to proceed *in forma pauperis* and a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. (Dkt. #1). On December 15, 2006, plaintiff filed a motion to replace his petition with an amended petition. (Dkt. #7). That motion was granted. (Dkt. #10). In his amended petition, however, as in his original petition, petitioner stated he currently had a personal restraint petition pending in the Washington State Court of Appeals, Division II, against his judgment and sentence, but not his conviction. The Court noted, however, that the term conviction and judgment are one and the same, that it appeared petitioner had not fully exhausted his remedies in state court, and that

1 therefore, his amended petition would not be served.

2 The Court ordered petitioner to file by no later than January 22, 2007, a second amended petition
3 under 28 U.S.C. § 2254 showing that his grounds for federal relief had been properly exhausted in state
4 court, or show cause why this matter should not be dismissed. On January 16, 2007, petitioner filed his
5 motion to stay these proceedings, so as to avoid dismissal of this matter pending the state court of appeals'
6 decision regarding his request to have his personal restraint petition dismissed. On January 31, 2007,
7 petitioner filed a response to the Court's order to show cause. That response indicates that the state court
8 of appeals has granted his request to dismiss his pending personal restraint petition.

9 Because it appears petitioner no longer has any matter pending in state court, petitioner's request
10 for a stay of proceedings here is moot. Accordingly, petitioner's motion to stay these proceedings (Dkt.
11 #11) hereby is DENIED. However, petitioner still has yet to file a second amended petition as ordered to
12 do so in the Court's prior order to show cause. Petitioner, therefore, shall file a second amended petition
13 containing his fully exhausted claims by **no later than March 16, 2007**, or show cause why this matter
14 should not be dismissed.

15 The Clerk shall send a copy of this Order to petitioner.

16 DATED this 14th day of February, 2007.

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19 Karen L. Strombom
20 United States Magistrate Judge
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